
Judgement No. 345*(Original: English)***Case No. 336:
Najjar****Against: The Secretary-General
of the United Nations**

Request by a former staff member of UNDP for reinstatement or, alternatively, for compensation for damage to reputation and career prospects.—Request for oral hearing and production of documents.

Conclusion of the Joint Appeals Board that the non-renewal of the Applicant's fixed-term appointment was taken properly in accordance with applicable rules and policy guidelines and that the allegations of prejudice were not substantiated.—Recommendation to reject the application.

Request for oral hearing and production of documents rejected.

Consideration of the nature of the Applicant's contract.—Applicant's contention that she was not aware at the time of her appointment that her contract was "time limited".—Finding that the Applicant was expected to understand the nature of a fixed-term appointment and of the implication of staff rule 104.12 (b).—Applicant's complaint about her assignment.—Application of the UNDP Personnel Policies and Practices and of the Reassignment Policy and Guidelines.—Respondent's discretion to use the services of staff members in any way he considers best.—Absence of a right to be appointed to a particular post or place.—Consideration of circumstances under which various offers of reassignment were made to the Applicant and rejected by her.—Applicant's contention that the fact that she was working against an established post at Headquarters created expectancy of continued employment.—The Tribunal holds that the way in which a post is described or paid for cannot create any rights not written into the contract.—Necessity to take account, when deciding about an extension, of the record of performance, the need for continued service and availability of suitable posts.—Tribunal's jurisprudence that the Respondent has an unquestioned right to terminate a fixed-term contract but that such a decision must not be tainted by caprice, prejudice, falsehood or lack of due process.—Finding that the decision to separate the Applicant was taken in good faith.—Conclusion that, in view of the Applicant's health, the Respondent might have adopted a more flexible attitude, but that he had no legal obligations towards the Applicant.

Application rejected.

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Endre Ustor;
Mr. Herbert Reis;

Whereas at the request of Miss Aida Ali Najjar, a former staff member of the United Nations Development Programme, hereinafter referred to as UNDP, the President of the Tribunal, with the agreement of the Respondent, extended to 1 August 1984 the time-limit for the filing of an application to the Tribunal;

Whereas on 3 August 1984, the Applicant filed an application, in which she requested the Tribunal

"1. (a) to grant the Appellant the opportunity to present testimony and to give oral evidence at hearings;

"(b) to produce such documents as exist in the Respondent's file which were consulted by the JAB [Joint Appeals Board] and utilized at

arriving at its decision without obtaining her response to other contradictory documentation or testimony;

“(c) to permit Counsel to make oral submissions in support of the complex facts and inter-related legal issues in the Appellant’s case.

“2. (a) to recommend her re-instatement and continued service; or

“(b) alternatively to grant her adequate and full compensation for the damage to her reputation, career and career prospects; and

“(c) to order the payment of all salaries, allowances and other benefits she would have been entitled to if she was continued in service in accordance with the contractual undertakings and obligations; and

“(d) for such other relief as may seem appropriate to the Tribunal.”;

Whereas the Respondent filed his answer on 12 October 1984;

Whereas the Applicant filed written observations on 11 April 1985;

Whereas on 6 May 1985, the Executive Secretary of the Tribunal informed the parties that the President of the Tribunal decided that no oral proceedings would be held in the case;

Whereas, in reply to a question put by the Tribunal, the Respondent submitted additional information on 29 May 1985;

Whereas the Applicant commented on the Respondent’s reply to the Tribunal’s questions on 4 June 1985;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNDP on 23 January 1979, on secondment from the Government of the Hashemite Kingdom of Jordan. She was initially offered a two-year fixed-term appointment as Assistant Resident Representative in Aden, Democratic Yemen, at the P-3, step VII level and accepted the offer at that level, “with hope reclassification to P-4 after one year’s satisfactory service . . .”.

In a letter dated 16 February 1980 and in a cable dated 7 March 1980, the UNDP Resident Representative in Democratic Yemen reported to the Assistant Administrator and Regional Director, RBAS [Regional Bureau of Arab States] that problems had arisen in the office on account of the Applicant’s behaviour and requested that the Applicant be removed from her post. In a cable dated 14 March 1980, the Assistant Administrator and Regional Director, RBAS notified the UNDP Resident Representative in Democratic Yemen that a “high level mission” would be sent to Democratic Yemen to investigate the “entire office situation” and “both sides of the story”. On 21 April 1980 the UNDP Resident Representative informed the Regional Director, RBAS that “as recommended by [him] and by members of the investigative mission he had pursued a policy of restraint in dealing with the Applicant. However, since the mission’s departure there was a “marked deterioration in Najjar’s relations at large” and operations in the office had been disrupted.

On 24 April 1980 the Assistant Administrator and Regional Director, RBAS requested the UNDP Resident Representative at Democratic Yemen to release the Applicant from her functions as soon as possible, to fill “on temporary basis pending reassignment”, an “unexpected short term area officer vacancy” at the Regional Bureau of Arab States in New York. On 1 May 1980 the Chief, Staff Development and Placement Section, Division of Personnel at Headquarters informed the Assistant Administrator and Regional Director, RBAS that he had discussed budgetary arrangements related to the Applicant’s “temporary assignment” with the Chief, Budget Section, Division of Finance at

Headquarters and that no post could be made available for the Applicant at RBAS/HQ [Headquarters] at the time. However, as a temporary measure and "owing to the urgency of bringing Ms. Najjar to New York, it [had] been agreed that she remain charged against her present post in Aden pending her reassignment to another field post." On 25 May 1980 the Applicant commenced to work as an "Area Officer" at the Headquarters Office of the Regional Bureau for Arab States.

On 16 October 1980 the Chief, Staff Development and Placement Section informed the Applicant that she was being seriously considered for the post of Assistant Resident Representative in the Yemen Arab Republic and that she should "confirm in writing at [her] earliest convenience [her] interest in this assignment". On 20 November 1980 the Chief, Staff Development and Placement Section recorded in a note for the file the substance of discussions held at two meetings on 8 October 1980 and 19 November 1980 between officials of the Regional Bureau of Arab States and the Division of Personnel, concerning the Applicant's assignment to New York. The note read in part as follows:

"In the overall staffing plan proposed by RBAS concerning Headquarters staff, no position is envisaged for Miss Najjar. The Bureau is interested in drawing upon candidates who have a long field experience with top-notch performance for the foreseen two vacancies in the Bureau. Whilst the Bureau is willing to consider Miss Najjar for the post of Assistant Resident Representative in Sana'a and the Division of Personnel has offered her this position in writing on 16 October, Miss Najjar has declined the offer stating her preference to remain in New York."

In a further note for the file dated 4 December 1980 the Chief, Staff Development and Placement Section indicated that the Applicant "would not accept an assignment outside New York" on the ground that she had already been assigned to the field; "believed that there were possibilities within RBAS" and "felt that other staff in the Bureau who had never served in the field should be offered field assignments first."

On 11 December 1980 the Chief, Staff Development and Placement Section informed the Applicant that he was trying to "identify a regular post" for her and that to this end he had circulated a copy of her "fact sheet" to the Bureaux for Africa, Asia and the Pacific, Latin America, Programme Policy and Evaluation, Special Activities and the United Nations Fund for Population Activities, in order that they review her candidature. In addition, on 12 December 1980 the Assistant Administrator for the Bureau of Special Activities asked the Acting Executive Secretary of the UN Capital Development Fund (UNCDF) whether the Applicant could be employed by the Fund. In a handwritten note at the bottom of the page, the Acting Executive Secretary recorded that the Applicant was "not interested in a CDF assignment".

The Applicant's services during her assignment as Area Officer in the RBAS from 25 May 1980 to 8 November 1980 were evaluated by the Chief, Division for West Asia in a note dated 18 December 1980 which read in part as follows:

"In view of the rather particular nature of the situation surrounding Aida Najjar's case, I think it will be unfair to adhere here to the format of the Performance Review Report; hence, I will have mine in the following narrative form.

"I found Aida Najjar quite disturbed at what happened during her assignment in Aden and particularly inconsidering from her firm belief

that her Aden case was not closed and that she was entitled to pursue it based on the report by the special mission which was sent to look into the conflicts between her and the Resident Representative. I tried to get her to separate between the pursuit of her Aden problem and her temporary assignment in which she was to work as Area Officer for four countries. I must say, in all fairness, that: (1) the volume of work during the majority of the period in question was rather low in view of the summer vacation season; (2) that I myself had little time to devote to train Aida Najjar. I think that this point is rather essential because I was told by her that in her short field assignment she did not have the benefit of any guidance on the basics of UNDP work . . .”.

On 15 January 1981 the Assistant Administrator and Regional Director, RBAS, recommended that the Applicant's contract be extended for a further two-year fixed-term, effective 23 January 1981. In addition, he stated that he was assigning the Applicant to an established post at the Regional Bureau for Arab States that had been previously occupied by another UNDP staff member. On 23 January 1981 the Chief of the Budget Section, Division of Finance approved the Applicant's reassignment to a post at the Division for Country Programmes in the Regional Bureau for Arab States. On 14 April 1981 the Permanent Representative of Jordan to the UN retroactively decided to extend the Applicant's secondment for an additional two year term beginning 15 January 1981. On 17 April 1981 the Applicant retroactively signed a letter of appointment for a fixed-term of two years until 22 January 1983.

On 23 April 1981 the Chief, Staff Development and Placement Section transmitted to the Applicant a performance evaluation report covering her period of service from January 1979 to May 1980, prepared by the Assistant Resident Representative in Democratic Yemen, and in which he evaluated the Applicant as “a staff member whose performance does not meet expected standards in all respects”. The Applicant kept the report and nine months later replied in a memorandum dated 28 January 1982 that she would refuse to sign the report on the ground that the Assistant Resident Representative's evaluation was “illogical and not objective”.

On 28 January 1982 the Chief, Division for Country Programmes, RBAS reprimanded the Applicant in writing for disregarding instructions related to the use of his telephone. The Applicant rejected the reprimand and placed her own account of the matter on her return from the mission in a memorandum dated 25 March 1982 addressed to him.

On 4 February 1982 the Chief, Staff Development and Placement Section requested the Chief, Country Programmes, RBAS and other staff members who had supervised the Applicant, to prepare a performance evaluation report for the Applicant and copied the request to the Applicant. On 28 April 1982 the Applicant prepared the pertinent sections of the performance evaluation report covering her period of service from January 1981 to 25 April 1982 and transmitted it to the Assistant Administrator and Director, RBAS.

On 19 May 1982, in reply to repeated inquiries on the extension of the Applicant's appointment made by the Government of the Hashemite Kingdom of Jordan through the UNDP Resident Representative in Jordan, the Director, Division of Personnel informed the UNDP Resident Representative that the Applicant's contract would expire in January 1983 and that he would “REVERT TOWARDS [the] END OF [the] YEAR REGARDING PLANS FOR [the] FUTURE”.

On 22 November 1982 the Officer-in-charge of the Division of Personnel offered the Applicant an assignment as Assistant Resident Representative in Bahrain or in Sudan. The Applicant was required to indicate which one of the assignments was acceptable to her and to confirm her availability to report for duty as soon as possible. In a memorandum dated 23 November 1982 the Applicant informed the Officer-in-charge of the Division of Personnel that "in pursuing the declared reassignment policy" she felt that the Division of Personnel was treating her "very unfairly if simply [her] tenure of assignment at Headquarters [was] compared with [her] peers; some of whom have never served in the field and others been at Headquarters for no less than five or seven years". She expressed her preference to remain at Headquarters and requested clarifications for the reasons to assign her to the field.

In a letter dated 28 November 1982 the Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations informed the Administrator of UNDP that his Government had decided to extend the Applicant's secondment to UNDP for a new term beginning 15 January 1983.

On 29 November 1982 the Applicant notified the Officer-in-charge of the Division of Personnel that she would not reply to his offer of an assignment to Bahrain or Sudan until she received a reply to the questions she had raised in her memorandum of 23 November 1982, objecting to her reassignment to the field. On 1 December 1982 the Deputy Director, Division of Personnel informed the Applicant that

"The decision of the Regional Bureau Director to reassign you to Bahrain or the Sudan is based on your performance record at Headquarters which, as you know, . . . has been less than satisfactory. It was therefore thought that, in light of the difficult financial situation facing the Programme, and the scarcity of posts at Headquarters, you could be given another chance in a place where there is currently an opening.

"I should state that there is no post for you in the Bureau at the moment."

On 6 December 1982 the Applicant informed the Deputy Director, Division of Personnel that she had discussed her performance evaluation report for the period January 1981 to April 1982 with the Chief, Country Programmes, RBAS; "disagreed on all of the document" and would "write a rebuttal". The Chief, Division for Country Programmes, RBAS, as first reporting officer, had evaluated the Applicant's services and had rated the Applicant as "a staff member whose performance does not meet expected standards in all respects".

In a memorandum dated 14 December 1982 addressed to the Deputy Director, Division of Personnel, the Applicant reiterated her request for the reasons to reassign her to the field. In a reply dated 15 December 1982 the Deputy Director, Division of Personnel stated that he inferred from the contents of her memorandum that the Applicant had declined the offers to be assigned to a post at Bahrain or Sudan.

On 3 January 1983 the Administrator of UNDP recorded in a note for the file the substance of discussions held with the Applicant at three meetings, during December 1982 concerning the expiration of her fixed-term appointment and the possibility of a further extension. The note read in part as follows:

". . . on Wednesday 22 December, the Administrator advised Miss Najjar that in spite of the reports on her performance in the Regional Bureau for Arab States, both in New York and in the People's Democratic Republic of Yemen, he was prepared to give her an opportunity to demonstrate her

capabilities and offered her a six-month extension of her contract. Miss Najjar stating that she had been the subject of prejudice and persecution in the Arab Bureau, rejected the offer. The Administrator said, as she departed, that he would review the situation further and be in touch with her.

"... on Tuesday, 28 December, the Administrator again met with Miss Najjar and told her that, prompted only by his concern for her as an individual, he was prepared to grant her an extension of the contract for one year if Miss Najjar were to make a personal undertaking to the Administrator that after a period of six months she would accept a personal decision by the Administrator that her termination, with thirty-days notice, was essential for the good of the Organization. The Administrator made it clear that this undertaking would be confidential between the Administrator personally and Miss Najjar. Miss Najjar again rejected the proposal.

"There was no discussion in either the 22 December meeting or the 29 December meeting concerning a specific assignment for Miss Najjar although the Administrator indicated the impossibility of her continuing in the Arab Bureau.

"... On Thursday, 30 December, the Administrator once again met with Miss Najjar and told her that his final suggestion was that she be extended for one year and assigned to the Regional Bureau for Asia and the Pacific as a Regional Projects Officer serving under the direction of Mr. Jehan Raheem. The Administrator told Miss Najjar that she should report to the Asia Bureau for duty on Monday morning, 3 January 1983, to assume her new duties.

"Initially, Miss Najjar said that she would not accept or reject the assignment to the Asia Bureau but wanted to think about it. Later in the meeting, immediately before her departure from the Administrator's office, she stated that it was unsatisfactory to her; that she would continue to serve in the Arab States Bureau, and that on Monday, 3 January, she would return to her desk in the Arab Bureau ...".

In fact, the Director, Division of Personnel had prepared a memorandum on 30 December 1982 in which he informed the Applicant that the Administrator had exceptionally decided to renew her contract for one year in order to give her "an opportunity to demonstrate [her] professional abilities in another environment"—as Regional Projects Officer, Division for Regional Projects, Regional Bureau for Asia and the Pacific. In a handwritten note at the bottom of the page, the Director, Division of Personnel, stated that the memorandum was not sent to the Applicant because she had told the Administrator at noon on 30 December 1982 that the offer was unsatisfactory.

In a letter dated 6 January 1983 the Officer-in-charge of the Division of Personnel informed the Applicant that

"In view of your failure to accept the offer which has been previously made to you for a one year extension of your contract with the United Nations Development Programme and which would have involved your serving as a Regional Projects Officer in the Regional Bureau for Asia and the Pacific ... your current fixed-term appointment with UNDP will lapse upon its expiration. ...

"However, since we wish to give you adequate notice of your separation, your fixed-term appointment which expires on 22 January 1983 will be extended through 5 February 1983."

On 7 January 1983 the Applicant informed the Officer-in-charge of the Division of Personnel that she wanted to confirm that at "no time had [she] been offered a post neither in writing nor verbally in a definite way to serve as a regional projects officer in the Regional Bureau for Asia and the Pacific" and added that she would accept such an offer "if made to [her] officially". On the same date, a Personnel Officer transmitted to the Applicant a letter of appointment for a fixed-term of fourteen days, until 5 February 1983.

On 10 January 1983 the Minister for Foreign Affairs of the Hashemite Kingdom of Jordan asked the UNDP Administrator for his "DIRECT INTERVENTION" to "AFFECT A RECONSIDERATION OF UNDP DECISION NOT TO RENEW THE FIXED-TERM APPOINTMENT OF MISS AIDA NAJJAR AS OF FEBRUARY 5, 1983 . . .".

On 17 January 1983 the Administrator recorded in a note for the file the substance of a meeting held with the Applicant in which he asserted that he had offered her "as a special gesture, the post of Women Development Coordinator" under the UNDP financed project of assistance to Tangiers. He also asserted that at the meeting the Applicant handed him a letter dated 17 January 1983 in which she denied that an offer had been made to her to serve in the Regional Bureau for Asia and the Pacific and requested him to review her case.

On 27 January 1983 the Director, Division of Personnel informed the Applicant, on behalf of the Administrator, that the post of Regional Projects Officer in the Regional Bureau of Asia and the Pacific, which had been offered to her personally by the Administrator, was no longer under consideration. However, at the meeting of 17 January 1983, the Administrator had decided to offer her a one-year fixed-term appointment, to serve in Tangiers as the Co-ordinator of the Women's Development Project. She was expected to report to the duty station on 1 March 1983 and during her assignment in Tangiers she would continue to be "administered by UNDP . . . under the 100 series of the Staff Regulations and Rules". The Director, Division of Personnel added:

"Please let me know whether you accept the above offer by signing and returning the attached duplicate of this letter not later than 1 February 1983 COB (close of business). In the event that this final offer of appointment is not accepted by you, we will have no option but to proceed with the separation formalities, effective 5 February 1983 as previously indicated to you."

The Applicant accepted the offer of the appointment in Tangiers in a letter dated 4 February 1983 addressed to the UNDP Administrator

". . . with serious reservations concerning the impact on [my] career prospects and whether a second field assignment does not contravene established personnel policies and guidelines and also because [I] otherwise face separation from service."

On 5 February 1983 the Applicant asked the Secretary-General to review under Staff Rule 111.3 (a) the administrative decision of 6 January 1983 conveyed to her by the Officer-in-charge of the Division of Personnel.

On 15 February 1983 the Administrator cabled the Executive Secretary of the Economic Commission for Africa, the Executing Agency of the Co-ordinator of the Women's Development Programme, in order to request his agreement to the Applicant's assignment to the post which he had offered to her. On 4 March 1983 the Director of the Division of Personnel informed the Applicant that arrangements had been made for her to be interviewed at the Economic

Commission for Africa and she was requested to report in Addis Ababa during the week commencing 7 March 1983.

On 17 March 1983 a Personnel Officer addressed a letter to the Applicant to confirm that on 14 March she had telephoned the Applicant to inquire whether she had received the letter from the Director, Division of Personnel asking her to proceed to Addis Ababa for an interview with the Economic Commission for Africa. Although the travel authorization had been duly issued, the Applicant had not replied and the Personnel Officer had been obliged to call the Applicant again on the same day, to offer to deliver a copy of the unanswered letter at the Applicant's apartment. The Applicant had stated this was not necessary since she would personally pick it up the next day. She did not do so. Accordingly, it was arranged for the Applicant's secretary to read to her the contents of the letter on the phone and a copy would be hand-delivered to the doorman. The Personnel Officer added:

"Since the post in Tangiers falls under the aegis of another agency, i.e. Economic Commission for Africa, it cannot be held open indefinitely. You are therefore requested to collect your travel authorization and make definite arrangements to proceed to Addis Ababa by Monday, 21 March 1983 since time is of the essence."

In a letter dated 18 March 1983 the Applicant informed the Director, Division of Personnel that she had been under medical treatment and was therefore unable to attend the office. She would consult her private doctor on 22 March 1983 and then notify him of the doctor's views.

On 28 March 1983 the Director, Division of Personnel informed the Applicant that since the United Nations Medical Director considered it would not be advisable for the Applicant to travel to Africa at the time, he regretted that UNDP was unable to keep the post in Tangiers open "on an indefinite basis" and added:

"As you are aware, the post in Tangiers was the final offer from us. Since there are no other suitable vacancies, we regret to advise you that we are obliged to effect your separation from UNDP service effective 31 March 1983 COB. Normally, your separation would have been effective 5 February 1983. However, since you may have been under the impression that your absence from duty was covered by the certificates from Dr. Weiss, dated 31 January 1983, which the UN Medical Director has not certified for sick leave purposes, we have decided to treat the period from 7 February 1983 to 31 March 1983 as Special Leave with Full Pay."

On 6 April 1983 the Applicant's appointment was extended retroactively for one month and 26 days from 6 February 1983 to 31 March 1983.

On 15 April 1983 the Applicant lodged an appeal with the Joint Appeals Board. The conclusions and recommendation of the Board read as follows:

"Conclusions and Recommendation"

"75. The Panel finds first that the administrative decision to separate the appellant from service on the expiration date of her last fixed-term appointment, effective 31 March 1983, was taken properly in accordance with the provisions of Staff Rule 104.12 (b) and 109.7 (a), in respect of the appellant's implied contractual rights to a fair and equitable treatment and with due regard to the principle of good faith in the relations between the staff and the Organization.

"76. The Panel *finds* second that the appellant failed in the course of her *temporary* assignment in New York to accept five successive genuine *bona fide* offers of reassignment at UNDP Headquarters and in the field and failed subsequently upon the expiration of her fixed-term appointment to take up a *final* offered posting at a *not* 'difficult' duty station. The Panel *finds* that UNDP had thereafter no further obligation arising out of a concrete commitment to continue the appellant's employment beyond the expiration date of her last contract and that the appellant could not reasonably nor objectively expect in good faith a legal expectancy of contract renewal after her repeated failure to take up a *final* offer of reassignment on the reporting date.

"77. The Panel *finds* next that the appellant's national Government had recommended and requested the extension of the appellant's secondment to UNDP; however, UNDP decided to separate the staff member upon the expiration of her last contract due to the necessities of the service in the interest of the Organization. The Panel *finds* consequently that in the absence of an agreement on the part of the receiving organization UNDP to renew the staff member's appointment, there was no extension of secondment and the contractual tripartite obligations ceased on the expiration date of the appellant's contract for the three concerned parties.

"78. The Panel *finds* that the appellant's performance record substantiates conclusively and without doubt that her performance was not meeting the expected standards in all respects and rejected therefore the appellant's contention in this regard as unfounded and not valid. The Panel notes, furthermore, the consistent jurisprudence of the Administrative Tribunal that the respondent was under no obligation to give reasons for not extending a staff member's fixed-term appointment.

"79. The Panel *finds* next that the appellant has not met the *burden of proof* to substantiate her allegation of personal prejudice 'on grounds of race, ethnic background and discrimination against women' on the part of the respondent against her and rejects therefore the appellant's contention in this regard as unfounded and not valid.

"80. The Panel *finds* also that UNDP acted in compliance and with due regard to its personnel policies and guidelines regarding reassignment of staff (UNDP/ADM/HQTRS/296, UNDP/ADM/FIELD/491, dated 23 March 1977, and UNDP/ADM/FIELD/758, UNDP/ADM/HQTRS/499, dated 30 December 1981). The Panel notes in this connection the wide discretionary authority of the Secretary-General concerning reassignment of staff according to Staff Regulation 1.2 and that the UNDP reassignment policy and guidelines are not compelling and envisage flexibility with due regard to the necessities of the service in general and to the complexity, diversity and unpredictable context of the Programme of UNDP and its operational procedure and requirements in particular. The Panel *finds*, furthermore, that the respondent, in first extending the appellant's reassignment at UNDP Headquarters for two years despite her lacking in-depth operational field experience and against the unanimous recommendations of the senior staff of the concerned Regional Bureau and of the Division of Personnel, UNDP, and in offering her subsequently in good faith six genuine postings, demonstrated on the part of UNDP a fair and equitable dealing with the appellant with due regard to the personal circumstances of her case and more than UNDP was obliged in view of the necessities of the service in the interest of the Organization.

"81. The Panel *finds* in view of the fact that the appellant was rated during her entire service as 'a staff member whose performance does not meet expected standards in all respects', her consistent lack of cooperation in insisting to remain assigned against the occupied post at RBAS, UNDP Headquarters, her failure to accept five successive genuine *bona fide* offers of reassignments and subsequently to take up a *final* offered posting at a *not* 'difficult' duty station and her demonstrated unwillingness to integrate in a hierarchic working environment as to work harmoniously and effectively in a team, she could for the above reasons not reasonably nor objectively expect in good faith an implied renewal of contract beyond the expiration date of her fixed-term appointment. The Panel rejects therefore the appellant's request for re-instatement and continued service as unfounded and being without merits.

"82. The Panel *finds* finally that UNDP made no damage to the appellant's career, career prospects and reputation and rejects her claim for compensation as unfounded and being without merits.

"83. Accordingly, the Panel makes no recommendation in favour of the appeal and rejects the appellant's claims in all respects.

On 3 August 1984, the Applicant filed the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent gave the Applicant a clear undertaking that she would have continuous employment and a career with UNDP. The Respondent did not honour this undertaking and did not renew the Applicant's fixed-term appointment, notwithstanding that the Applicant was assigned to an established post. The Respondent's conduct was tainted by prejudice, unfairness, and discriminating attitude against women.

2. The Respondent's reliance on the Applicant's unsatisfactory performance in order not to renew her appointment was contradicted by the Respondent's offers of field assignments which required a great degree of responsibility.

3. The Respondent violated its own personnel policies by assigning the Applicant to a hardship post shortly after she had served under those conditions.

4. The Joint Appeals Board did not properly consider the Applicant's case and denied her the right of proper review of the administrative decision because it failed to focus on whether there was an expectancy of continued employment, an available post and an ongoing function to be performed.

5. The Joint Appeals Board erred in concluding that "genuine" offers were made to the Applicant for reassignment to a post in the field. An examination of the inquiries made by the Respondent to the Applicant as to her interest in alternative positions were no more than requests for reactions and did not have contractual implications.

6. The Joint Appeals Board erred in seeking to examine questions related to the Applicant's performance when this was never an issue between the Applicant and the Respondent.

Whereas the Respondent's principal contentions are:

1. A fixed-term appointment does not carry any expectancy of renewal or conversion into any other type of appointment.

2. Attempts to reassign the Applicant to new duties was a valid exercise of administrative discretion which did not violate the Applicant's terms of appointment or any of her rights.

The Tribunal, having deliberated from 23 May to 11 June 1985, now pronounces the following judgement:

I. The first part of the Applicant's pleas asks for an oral hearing and production of documents which, it is alleged, the Joint Appeals Board (JAB) consulted to the detriment of the Applicant's interests. The Tribunal examines valid criticisms of procedure and conclusions of the JAB, but finds that in this case all the files consulted by the JAB have been available to both sides and the submissions of the parties are sufficiently comprehensive to enable the Tribunal to undertake this task without having recourse to an oral hearing. These requests were therefore rejected.

II. As regards all the other pleas, a preliminary point for determination is the nature of the contract the Applicant entered into at the time of her appointment at Aden. The Applicant claims that it was not indicated in writing or otherwise that the period of her service with the United Nations Development Programme (UNDP) would in any way be "time limited".

III. The Applicant joined duty at Aden on 23 January 1979 and on 2 October 1978 when the first formal offer of appointment was made by the UNDP, it was stated that the "offer was for a fixed-term appointment for two years". In addition, the Applicant had been supplied with a copy of the Staff Rules and Regulations; Rule 104.12 (b) says "the fixed-term appointment does not carry any expectation of renewal or of conversion to any other type of appointment". Identical wording was included in the formal contract signed by the Applicant on 5 March 1979. Furthermore, since the Applicant was in the service of the Government of Jordan, their concurrence for secondment was forthcoming at the time of her first appointment and also on subsequent occasions, but their approval for any indefinite continuation of the Applicant's contract could not be assumed as a matter of course. In this context, the Applicant's own knowledge and experience of UN matters when she was dealing with them in Amman and elsewhere as a Jordanian civil servant, is also relevant. In the circumstances, the Tribunal concludes that the Applicant was fully aware of the limitations and conditions imposed by her fixed-term contract.

IV. Despite the nature of the Applicant's contract, the question whether she had any reasonable or legitimate expectation for its renewal requires examination. The Applicant left Aden on temporary transfer to New York on 16 May 1980, after a period of about seventeen months, nearly four of which she spent outside either for training or on sick leave. That there were serious troubles between her and her supervisors during her stay in Aden is not contested, although the Applicant asserts that she has not seen the report which the UNDP Headquarters in New York received as a result of an enquiry conducted by two officers, but this does not, in the view of the Tribunal, affect the fact that the Respondent decided in the interest of the UNDP to transfer the Applicant temporarily to New York.

The Applicant was repeatedly informed of the temporary nature of her assignment in New York and that she was to be sent out again. With this end in view, several possibilities were explored, but the Applicant turned down all of them either on the ground that she had already served in what she described as a difficult station (i.e. Aden) or that other staff members who had not served in

the field should be sent out first or that she had not done her full term in New York. In all these matters, the Applicant relies heavily on the UNDP Personnel Policies and Practices issued on 23 March 1977 and a related document entitled Reassignment Policy and Guidelines dated 9 March 1981.

The Tribunal notes that in 1979-80 Aden was not classified as a difficult station and the Applicant's insistence that she should stay in New York for the usual term could only be understood if her contract was indeed to go much longer beyond 22 January 1981 when it was first to expire. The Tribunal also notes that the Personnel Policies and Practices and the other related documents indicate general guidelines and a framework which must necessarily need modifications for staff members holding short and fixed-term contracts, and takes the view that in any event the Respondent must have full discretion to use the services of staff members in any way he considers best in the interest of UNDP. No individual staff member can claim as a matter of right to be appointed in a particular post or place. The Applicant had therefore no valid grounds for objecting to moving out of the Headquarters or to being assigned to any job falling within the general terms of her contract. Nevertheless, the fact that the Respondent had, in the duration of her first contract, offered to post the Applicant to a succession of jobs, could raise the hope that the Applicant's first contract would be extended. In practice, it was so extended until 22 January 1983 and eventually until 31 March 1983, and thus the Applicant's hope for an extension of the first contract was fulfilled. This extension after 22 January 1981 was brought about mainly at the instance and initiative of Mr. Al-Shaikly, the Assistant Administrator and Regional Director, RBAS, and the Jordanian Government's approval was given retrospectively on 14 April 1981.

V. Very different sets of facts have to be taken into account in deciding if an extension of the second contract expiring on 22 January 1983 could legitimately or reasonably be expected. From 25 May 1980 when the Applicant came to New York from Aden until 31 March 1983 when she was finally separated, the record of events as given in the files is both dismal and discursive. The Tribunal wishes to comment only on three salient aspects.

First, the Respondent was experiencing increasing difficulties in finding a berth for the Applicant. She consistently declined to be posted abroad and was determined to continue in the Arab Bureau. Her attitude in these and similar matters (for example, delaying by nine and six months her comments on personal evaluation reports on her performance or even refusing to sign them) leaves the impression that unless decisions were in her favour, she was not prepared to accept or conform to them.

Secondly, apart from two or three persons in the UNDP, she had misunderstandings and acrimonious exchanges with a number of people. The Tribunal considers that the bitterness generated by an unauthorized telephone call by the Applicant was avoidable and was excessive on both sides, and that some of the comments made by the Applicant in other contexts on her supervisors or their opinions were in intemperate language. On the other hand, there is little or no evidence that anyone showed bias or prejudice of any kind against the Applicant in coming to various decisions taken at different times.

Thirdly, the Applicant maintains that she was not offered officially any alternative appointment, except in posts abroad, in the entire period of her stay in New York. Even a casual perusal of the files would seem to conflict with such a conclusion, particularly in respect of an offer of a job in the Regional Bureau for Asia and the Pacific. The comments and the notes made at the time of this

offer in December 1982 leave no room for doubt that an offer was made by the Administrator himself and was rejected by the Applicant. Her later acceptance of this offer, after she had received notice of termination dated 6 January 1983 of her current contract, had little validity, for by then the offer was no longer "under consideration"—a phrase the Tribunal interprets to mean that the job offered could no longer, and for whatever reasons, be made available.

VI. The JAB has dealt at length, in full co-operation and knowledge of both the parties, with the numerous instances of confusion and contradiction, of delay and defiance which characterize this case and which were creating an atmosphere unfavourable to the Applicant. In November 1982, the Jordanian Government gave their agreement for the Applicant "to continue her work with the UNDP for a new term beginning 15 January 1983": there are indications that the Government sought an extension for one year. The Administrator saw the Applicant three times in December 1982, and advised her "that in spite of the report on her performance in the Regional Bureau for Arab States, both in New York and in the People's Democratic Republic of Yemen" she could be offered a six-month extension. This was refused as was the "final" offer for work with the Regional Bureau for Asia and the Pacific made on 30 December 1982 by the Administrator. In the event, the Applicant was served on 6 January 1983 with notice of termination effective from 5 February 1983.

VII. The Applicant contends that inasmuch as she was working against an established or a regular post at Headquarters, she was by implication entitled to expect continuous employment with the UNDP. On the other hand, it was clear in the early stages that she was being paid against a post in the field. At any rate, the way a post was described or paid for could not, in the Tribunal's opinion, create by itself any rights not written into the contract or otherwise accepted by all concerned. Furthermore, the Respondent had repeatedly made it clear that the Applicant's transfer to New York from Aden was entirely temporary and emphasized that she could not be kept in the Regional Bureau for Arab States for any length of time.

VIII. A new chapter in this involved case opened early in January 1983 after the notice of termination had been given. The offer, rejected earlier by the Applicant for the Regional Bureau for Asia and the Pacific was promptly accepted by her and on 10 January 1983 a telegram from the Foreign Minister of Jordan suggested that the Applicant could be given an extension for one year and that she would accept any post offered by the Administrator. The Administrator met the representatives of the Permanent Mission of Jordan to the UN on 17 January 1983 and after reviewing the case of the Applicant with them, made a further final offer to find her a job at Tangiers with the co-operation of the Economic Commission for Africa. The Jordanian Mission was, according to a note for the file, satisfied with this offer made by the Administrator and the Ambassador of Jordan apparently "expressed his sincere appreciation for the Administrator's personal attention . . . and his satisfaction with the decision regarding the Tangiers post. Final acceptance of the offer would rest with Miss Najjar."

IX. The Applicant accepted the offer for Tangiers with serious reservation, contested the decision to separate her from UNDP service and did not maintain suitable contacts with the appropriate departments for travel and other arrangements for her interview in Addis Ababa before she could be accepted for Tangiers, even though she had been told that the job could not be kept open indefinitely. It was only on 23 March 1983—nearly two and a half months after the offer—that the Respondent was informed by the Medical

Director of the UN that the Applicant was not fit at that time to undertake travel outside the United States of America.

X. In determining whether fixed-term contracts should be extended, several considerations are obviously important: the record of performance, the need for continued service and the availability of suitable posts. Throughout the period of the Applicant's service, her performance was found unsatisfactory by all her immediate supervisors, with the exception of the Chief, Division for Western Asia, who wrote a relatively appreciative report on the work done under him for a brief period of about five months. The Tribunal does not accept that because of delay and difficulties of preparing, in absolutely correct form and order, performance evaluation reports, the Administrator lacked competence to come in good faith to a conclusion about the Applicant's performance on the basis of information he gathered.

XI. On the other hand, the Tribunal's jurisprudence has consistently maintained that while, under the Regulations and Rules governing fixed-term contracts, the Respondent has unquestioned right to terminate such contracts, it must nevertheless be ensured that the decision to terminate must not be tainted by caprice, prejudice, falsehood or any serious lack of due process. In the present instance, the Tribunal finds that the Respondent's decision to separate the Applicant was taken in good faith and after all efforts to find suitable and alternative appointment had failed because of the Applicant's determination to stay on in New York. The Respondent's action was consistent with sound administrative practice and procedure, although the Tribunal has some slight reservation about the involved offer made to the Applicant for a six-month further stay in the Arab Bureau coupled with a private understanding to separate her after this period. However, this offer was also turned down by the Applicant.

Inasmuch as the Respondent had accepted that the Applicant was indeed unfit to travel because of reasons of health, she deserved some sympathy. The Applicant was responsible for much of the difficulties she faced during her work with UNDP but some further efforts on the part of the Respondent to secure a little more time for the Applicant to go to Addis Ababa would have been a fitting conclusion to the numerous attempts it had made to find an alternative appointment for the Applicant. However, the Respondent had no legal obligations towards the Applicant.

XII. For all the above reasons, the application is rejected.

(Signatures)

Samar SEN
Vice-President, presiding

Endre USTOR
Member

Herbert REIS
Member

R. Maria VICIEN-MILBURN
Executive Secretary

Geneva, 11 June 1985
